

FACT SHEET REGARDING POST -9/11 BACKLASH DISCRIMINATION

OSC

Office of Special Counsel for Immigration Related,
Unfair Employment Practices,
Civil Rights Division, U.S. Dept. of Justice

Jurisdiction:

Prohibited Conduct: Subject to certain exceptions, Citizenship/immigration status and national origin discrimination with respect to hiring, firing, and recruitment or referral for a fee; unfair documentary practices during the employment eligibility verification (Form I-9) process; and retaliation.

Employers Covered: Employers with four or more employees are covered by the prohibition against citizenship/immigration status discrimination and unfair documentary practices. Employers with four to fourteen employees are covered by the prohibition against national origin discrimination.

Covered Persons: U.S. citizens and work authorized individuals are protected from national origin discrimination and document abuse. U.S. citizens, recent lawful permanent residents, asylees, refugees and temporary residents are protected from citizenship/immigration status discrimination.

Example of employment discrimination:

Citizenship/Immigration Status Discrimination:

Anwar, an asylee from Egypt, applies for a position with a financial services company. The company refuses to hire him because he is not a U.S. citizen and does not have a green card. What should Anwar do?

Anwar can file a charge with OSC alleging Citizenship/immigration status discrimination. Employers may not refuse to hire asylees or refugees because they are not U.S. citizens or lawful permanent residents, or because they do not possess a green card, unless such citizenship status discrimination is required by law, regulation or government contract.

Employers should verify the employment eligibility of all new hires, whether or not U.S. citizens, by completing the Form I-9. Individuals may choose from lists of acceptable documents, including an unrestricted Social Security card and driver's license. Employers may not require green cards from non-citizens for this purpose.

EEOC

Equal Employment Opportunity Commission
Source: www.eeoc.gov/facts/backlash-employee.htm

Jurisdiction:

Prohibited Conduct: Religious, national origin, gender, age, disability, pregnancy and race discrimination with respect to any aspect of employment, including the terms and conditions of employment.

Employers Covered: Employers with fifteen or more employees.

Covered Persons: All individuals, regardless of immigration status.

Example of employment discrimination:

Religious Discrimination:

Narinder, a South Asian Sikh who wears a turban, applies for a position as a cashier at XYZ. He is denied a job because XYZ fears Narinder's religious attire will make customers uncomfortable. What should XYZ do?

XYZ may not refuse to hire Narinder due to customer preferences about religious attire. That would be unlawful religious discrimination. It would be the same as refusing to hire Narinder because he is a Sikh. It is unlawful to treat individuals adversely in the workplace based upon bias about their religion, race or national origin.

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Examples continued

Citizenship/immigration status discrimination:

- An employer posts a sign that states, "We hire Americans only."
- An employer refuses to hire a job applicant because he or she does not look like an "American citizen."
- An employer fires employees who are not U.S. citizens or who appear "foreign."

National origin discrimination:

- An employer refuses to hire applicants because they are, or appear to be, of Arab or South Asian descent.
- An employer fires an employee who wears a head scarf, veil or turban.
- An employer refuses to hire anyone with a foreign accent.
- An employer continuously uses ethnic slurs when referring to an employee who was born in Pakistan, resulting in the forced resignation of the employee.

Unfair documentary practices:

- An employer scrutinizes and rejects the documents presented by Arab Americans to establish employment eligibility in the United States (Form I-9) to a far greater extent than those of other new hires.
- An employer requires all south Asians to complete a new Form I-9, while not requiring other employees to do so.
- An employer requires applicants or new employees who appear "Muslim" to provide documents establishing U.S. citizenship, while allowing other job applicants to present any combination of legally acceptable documents (such as a Social Security card and driver's license) to complete the Form I-9.
- An employer requires non-citizens to provide a document issued by the INS or DHS to complete the Form I-9, rather than allowing such individuals the opportunity to present any combination of acceptable documentation (including an unrestricted Social Security card and a driver's license).

Contacting OSC: For more information about OSC, including obtaining charge forms, visit www.usdoj.gov/crt/osc or call OSC's toll-free Worker Hotline at 1-800-255-7688 (TDD: 1-800-237-2515). Charges must be filed within 180 days of the alleged discriminatory act.

Examples continued

Religious discrimination:

Like employees of other religions, Muslim employees may need accommodations such as time off for religious holidays or exceptions to dress and grooming codes.

Muslim employees in XYZ corporation approach their supervisor and ask that they be allowed to use a conference room in an adjacent building for prayer. Until making the request, those employees prayed at their work stations. What should XYZ do?

When the room is needed for business purposes, XYZ can deny its use for personal religious purposes. However, allowing the employees to use the conference room for prayers likely would not impose an undue hardship on XYZ in many other circumstances. Similarly, prayer often can be performed during breaks, so that providing sufficient time during work hours for prayer would not result in an undue hardship. If going to another building for prayer takes longer than the allotted break periods, the employees still can be accommodated if the nature of work makes flexible scheduling feasible. XYZ can require employees to make up any work time missed for religious observance.

Example of workplace harassment:

Muhammad works for XYZ. Muhammad meets with his manager and complains that one of his coworkers, Bill, regularly calls him names like "camel jockey," "the local terrorist," and "the ayatollah," and has intentionally embarrassed him in front of customers by claiming that he is incompetent. How should the supervisor respond?

Managers and supervisors who learn about objectionable workplace conduct based on religion or national origin are responsible for taking steps to correct the conduct by anyone under their control. Muhammad's manager should relay Muhammad's complaint to the appropriate manager if he does not supervise Bill. If XYZ determines that harassment occurred, it should take disciplinary action against Bill that is significant enough to ensure that the harassment does not continue.

Contacting EEOC: For more information about EEOC, visit www.eeoc.gov or call 1-800-669-4000 (TTY 1-800-669-6820). Charges must be filed within 180 days of the alleged discriminatory act.